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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,497	11/14/2001	Leola Henry	PIL0123/US	3217
33072	7590	10/20/2004	EXAMINER	
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,497

Applicant(s)

HENRY ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuechle et al in view of Hahn et al.

Kuechle et al disclose a dough used to prepare cut biscuits, drop biscuits, dumplings etc... The dough is shelf stable at freezing temperatures. The dough comprises about 30-51 weight percent flour, about .5-4 weight percent protein supplement, about 5-28 weight percent fat, about .5-12% sugar, about 1-5% leavening agent and water. The flour to water ratio is in the range of between about 2:1 to 1:1. Humectant is added to the dough to provide a water activity of less than .97. (see col. 3 lines 35-40, col. 4, col. 5 lines 15-16, col. 6 lines 50-54, col. 9 lines 1-5)

Kuechle et al do not disclose the frozen of biscuit having a smear layer, the weight of the biscuit as in claims 5-8, the smear flavor as in claims 9-15.

Hahn et al disclose dough product incorporating filling. The filling comprises fat, sugar, and flavorants. The sugar can be corn syrup solid, brown sugar, maple sugar, molasses, sucrose etc.. and mixtures of these sugars. The flavorants include spices, cream cheese, orange, fruit, fruit extract, cinnamon etc.... The fillings are used in conjunction with doughs to provide filled dough products. The fillings can be utilized with any type of dough to form any dough product that is desirably filled. The filled dough product is frozen. Examples of dough products include biscuits, croissants, scones, dinner rolls etc.. The filling has a water activity of at least about .725.(see columns 4-12 and example 1). Example 3 shows the a filled dough product is formed by spreading the filling on the dough sheet and rolling the filled dough sheet to form rolled dough product which is stored and baked before consumption.

It would have been obvious to one skilled in the art to use the filling as disclosed in Hahn et al in the dough product of Kuechle et al when desiring to make a filled dough product having different taste, texture and flavor. Hahn et al disclose any dough formulation, including biscuit, can be used with the filling. It would have been obvious to add different flavoring materials depending on the flavor wanted for the product. For example, if a cheese filling is wanted, it would have been obvious to add cheese flavor. It would also have been obvious to make the product in any size desired; this would have been an obvious matter of choice. It would also have been obvious to use margarine or butter as the fat source if such taste is desired. It is notoriously well known to use butter or margarine as a fat source. Kuechle et al disclose the dough product can be thawed and stored in the refrigerator for about 1-7 days. Thus, if one does not want to store the dough in the refrigerator, it would have been obvious to bake the dough without thawing. The Kuechle et al dough does not need to be proofed before baking.

The argument and affidavit filed on Sept. 20, 2004 are moot in view of the new rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday, and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuesday, October 19, 2004


LIEN TRAN
PRIMARY EXAMINER
Group 1700